97-17/DPM
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAERSK TANKERS SINGAPORE PTE LTD.,

Petitioner,

-against-

VALERO MARKETING AND SUPPLY COMPANY,

Respondent.

---x

17 Civ. ____ ( )

PETITION TO COMPEL ARBITRATION PURSUANT TO 9 U.S.C. §§ 1-16

Petitioner, MAERSK TANKERS SINGAPORE PTE LTD. ("Maersk Tankers"), by its attorneys Freehill Hogan & Mahar, LLP, as and for its Petition against Respondent VALERO MARKETING AND SUPPLY COMPANY ("Valero"), alleges upon information and belief as follows:

1. This Petition to compel arbitration is made pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA") seeking an Order that Respondent Valero comply with the parties' written maritime agreement to arbitrate at New York.

2. The jurisdiction of this Court is based upon the provisions of Section 4 of the FAA.

3. This is a case of admiralty and maritime jurisdiction and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

4. At all material times, Petitioner Maersk Tankers was and still is a foreign corporation located at 10-00, Southpoint 200, Cantonment Road, Singapore 089763, and was and still is the Registered Owner of the vessel M/T MAERSK MESSINA.

5. At all material times, upon information and belief, Respondent Valero was and still is a domestic corporation with an office and principal place of business at One Valero Way, San Antonio, Texas 78249, and was the voyage charterer of the vessel M/T MAERSK MESSINA.

6. On or about November 15, 2016, Maersk Tankers, as Registered Owner of the vessel M/T MAERSK MESSINA, and Valero, as Voyage Charterer, entered into a written voyage charter party contract, on an amended ExxonMobil VOY 2005 form, in which Valero agreed to charter the vessel from Maersk Tankers to carry a cargo of 38,000 tons of fuel from ports located in the US Gulf (including the Mississippi River) to ports located in Brazil ("Charter Party"). A copy of the Charter Party is annexed hereto as Exhibit "A."

7. Disputes have arisen between Maersk Tankers and Valero concerning Valero's failure to perform in accordance with the terms of the Charter Party. Specifically, Maersk Tankers has to date presented claims to Valero in the total sum of $671,036.33, stemming from several breaches by Valero of its contractual obligations under the Charter Party including but not limited to charges for deviating the vessel and for time used in ports.

8. Clause 35(a) of the Charter Party expressly provides:

> (a) Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York, pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by Owner, one by Charterer and one by the two so chosen. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on the other party to specify further disputes

> or differences under this Charter for hearing and determination. The decision of any two of the three on any point or points shall be final. The arbitrators may grant any relief which they, or a majority of them, deem just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance. Awards made in pursuance to this Clause may include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

(Ex. A, Part II, Clause 35(a) ("Arbitration"), lines 642-651.)

9. In light of Valero's failure to remit payment for the outstanding amounts due and owing under the Charter Party, Maersk Tankers, on March 6, 2017, by way of its attorneys, demanded arbitration, pursuant to Clause 35, and appointed as its arbitrator Mr. Keith W. Heard, Esq., Burke & Parsons, 100 Park Avenue, 30th Floor, New York, New York 10017. In addition, in accordance with Clause 35, Maersk Tankers demanded that Valero promptly appoint its arbitrator. A copy of the arbitration demand appointing Mr. Heard is annexed hereto as Exhibit "B."

10. Maersk Tankers asserted additional claims against Valero following its March 6, 2017 demand. Through written notice by its attorneys on April 5, 2017, Maersk Tankers informed Valero it would also be prosecuting these additional claims in New York arbitration. A copy of this additional written notice is annexed hereto as Exhibit "C."

11. Given Valero had ignored Petitioner's earlier demand for arbitration, Maersk Tankers again urged Valero "to promptly nominate its arbitrator, failing which [Maersk Tankers] will apply for 9 USC Section 5 relief from the US District Court for the Southern District of New York." (Ex. "C" annexed hereto.)

12. Despite the aforementioned arbitration demand and additional written notice, to date Valero has wrongfully failed to appoint its arbitrator. The validity and legality of the Charter Party,

including the agreement to submit all disputes arising thereunder to arbitration in New York, is not in issue and has never been questioned.

13. Valero is in breach of the Charter Party for failing to pay Maersk Tankers outstanding sums due. Valero has recently remitted a partial payment in the amount of $12,419.06. The balance still owed by Valero is $658,617.27, as most nearly can be determined at the present time and excluding interest, costs and legal fees.

14. Maersk Tankers has duly performed all its obligations to Valero in accordance with the terms of the Charter Party.

15. Maersk Tankers has incurred costs and attorneys' fees related to this Petition, which it was compelled to make due to Valero's unjustifiable delay in appointing an arbitrator and proceeding to arbitration.

16. Maersk Tankers expressly reserves all its rights under the Charter Party, including but not limited to the right to claim for any additional damages it may suffer as a result of enforcing its right to arbitrate and Valero's wrongful refusal to nominate its arbitrator in breach of the Charter Party's Arbitration Clause, and nothing herein constitutes a waiver of any of Maersk Tankers' rights thereunder.

17. No previous application has been made to this Court, or to any other Court or Judge for the order and relief sought herein.

WHEREFORE, Maersk Tankers prays:

1. That in accordance with Sections 4 and 5 of the FAA, that this Court enter an Order directing that Valero appoint an arbitrator within ten days after service upon the Respondent or its

attorneys of a copy of the Order entered herein;

2. That in the event Valero fails to appoint an arbitrator within ten days, that Maersk Tankers be allowed to appoint an arbitrator on Valero's behalf;

3. That process in due form of law according to the practice of this Court may issue against Respondent;

4. That this Court retain jurisdiction over this matter until a final award is entered herein under the terms of the Charter Party and pursuant to the provisions of 9 U.S.C. Sections 1 *et seq.*;

5. That a decree be entered in favor of Maersk Tankers against Valero for the full amount of the Petitioner's damages, $658,617.27, together with interest and costs, should Respondent fail to appear;

6. That Maersk Tankers be awarded the costs of this Petition, including disbursements and attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 18, 2017

FREEHILL, HOGAN & MAHAR
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MAERSK TANKERS SINGAPORE PTE.LTD.

By: ____________________
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